

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*P1-1  
Phillips  
120000*

**FILE:** B-205004.2

**DATE:** November 29, 1982

**MATTER OF:** Sunsav, Inc.

**DIGEST:**

1. Information required by specifications indicating that manufacturer of solar energy collectors had produced minimum of 1,000 units in successful operation in commercial installations goes to the responsiveness of the bid in view of specification requirement that such information be submitted with bid and that information bearing on performance involves matter of responsiveness.
2. Bidder cannot rely on information furnished by contracting agency in connection with prior procurement for same requirement to establish acceptability of product offered since such information is not contained in current solicitation and only material available at bid opening may be considered in making responsiveness determination. Postopening explanation by bidder cannot be considered, even if lower price may be obtained in particular procurement.

Sunsav, Inc. (Sunsav), protests the award of a contract to Sippican Solar Systems under invitation for bids (IFB) No. 525-20-82, issued by the Veterans Administration (VA) for the installation of a solar domestic water heating system for building No. 20, VA Medical Center, Brockton, Massachusetts. Based on the following, we deny the protest.

By way of background, there follows a brief summary of the events leading up to the present protest. Initially, the above requirement was procured by the issuance of IFB No. 525-45-61. A firm, not involved in the present protest, lodged a protest against the award of a contract under IFB No. 525-45-61 on the basis that the specifications effectively limited the solar panel manufacturer to one company, Daystar, even though the specifications allowed an "or equal" solar panel. According to the protester, Daystar was the only manufacturer using the over temperature protection

(OTP) system called for by the specifications and since the protester was not a Daystar dealer, it was at a disadvantage. Subsequently, on September 22, 1981, the VA issued an amendment to the solicitation which identified eight companies that manufactured solar panels that would be acceptable and meet the bid specifications. By letter of September 25, 1981, the same eight companies were identified as having solar panels which were acceptable. However, after bid opening, the solicitation was canceled for reasons not related to the present protest. The contracting officer advised all parties concerned that the specifications were being revised and a new solicitation would be issued when that task was accomplished. The present invitation (IFB 525-20-82) was issued and, presumably, any restrictive features were eliminated from the solicitation.

Bids were opened on January 6, 1982, with eight bidders responding. Sunsav submitted the second low bid. However, it was rejected as nonresponsive as was the low bidder.

Sunsav's bid was rejected because of the following deficiencies:

1. No information was submitted to indicate that the solar energy collector manufacturer had produced a minimum of 1,000 units in successful operation in commercial installations as required by section 13981-b-(1) of the specifications.
2. Tests by an independent testing laboratory required by the specifications were incomplete.
3. Sunsav failed to list three of the collector manufacturer's OTP systems presently in use as required by section 13981 h of the specifications.
4. Calculations required by the specifications were incomplete.
5. No information was submitted to show the number and location of collectors as required by the specifications.

The first issue raised by Sunsav is why the contracting officer treated the deficiencies in Sunsav's bid as matter of responsiveness. It has long been the position of this

Office that information bearing on the performance history of a product to be furnished involves a matter of responsiveness and that information must be submitted with the bid. See Jensen Corporation, B-200277.2, June 24, 1981, 81-1 CPD 524.

In this regard, we note that section 1.4.6.2 of the specifications requires that all of the above information must be submitted with the bid. This, coupled with the fact that we have held that it is a matter of responsiveness where the specification provisions are concerned with the reliability of the specific equipment to be supplied under the contract, supports the VA's position that the above deficiencies went to the responsiveness of Sunsav's bid. See 48 Comp. Gen. 298 (1968).

Also in this connection, we note that in its September 9, 1982, submission, Sunsav suggested that the contracting officer had some sort of latitude to request certification (presumably that the equipment offered met the specification requirements) from Sunsav instead of declaring that Sunsav's bid was nonresponsive. We have held that only material available at bid opening may be considered in making a responsiveness determination and that postopening explanations by the bidder cannot be considered, even if a lower price may be obtained in a particular procurement. See Medi-Car of Alachua County, B-205634, May 7, 1982, 82-1 CPD 439. Accordingly, it was entirely proper under the rules governing formal advertising for the contracting officer to declare Sunsav's bid nonresponsive. For that matter, it was the only course of action available to him.

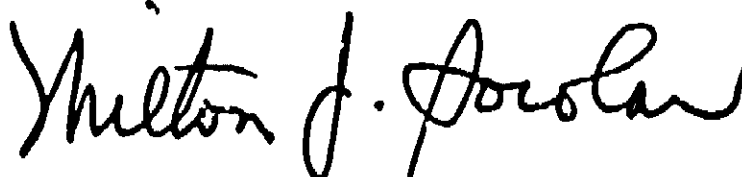
In regard to deficiency No. 1, concerning Sunsav's failure to furnish information indicating the solar collector manufacturer's production of a minimum of 1,000 units which are in successful operation in commercial installations, Sunsav relied on amendment No. 1 to the initial solicitation (IFB 525-45-61) and the September 25, 1981, letter, both of which listed eight companies that manufactured acceptable solar panels that would meet the specifications. Sunsav offered solar panels manufactured by the Olin Corporation (Olin), one of the eight listed companies. Sunsav apparently viewed the amendment and letter as providing a VA-approved list of collectors and since the collector manufactured by Olin was on the list, it was unnecessary to submit information as to the 1,000 Olin units in successful operation in commercial installations. However, it should be pointed out that the amendment and subsequent letter were only applicable to IFB 525-45-61 and had VA intended the list to be an approved list of collectors, it would have incorporated the information contained in the list and

letter into the present solicitation, which VA did not do. Therefore, we agree with the VA that a letter written in connection with a prior solicitation cannot be substituted for a bid requirement in the present solicitation. Past actions of the procuring activity do not affect the responsiveness of the bid, which must be determined from the bid itself. See Engineering Design and Development, B-185332, February 11, 1976, 76-1 CPD 92.

Sunsav also argues that the rejection of its bid will cost the Government in excess of \$17,000, the difference between its bid price and that of the successful bidder. It is the position of our Office that strict maintenance of the established principles of competitive procurement by the Government is infinitely more in the public interest than for the Government to obtain a pecuniary advantage in a particular case by violation of the rules. See Environmental Tectonics Corporation, B-183616, October 31, 1975, 75-2 CPD 266.

On the basis of the above consideration, we must conclude that the contracting officer's determination that Sunsav's bid was nonresponsive for failure to furnish information on Olin's collectors in commercial use as required by the specifications is correct. In view of this conclusion, we need not consider the merits of the remaining deficiencies found by the contracting officer in Sunsav's bid.

Accordingly, the protest is denied.

*for*   
Comptroller General  
of the United States